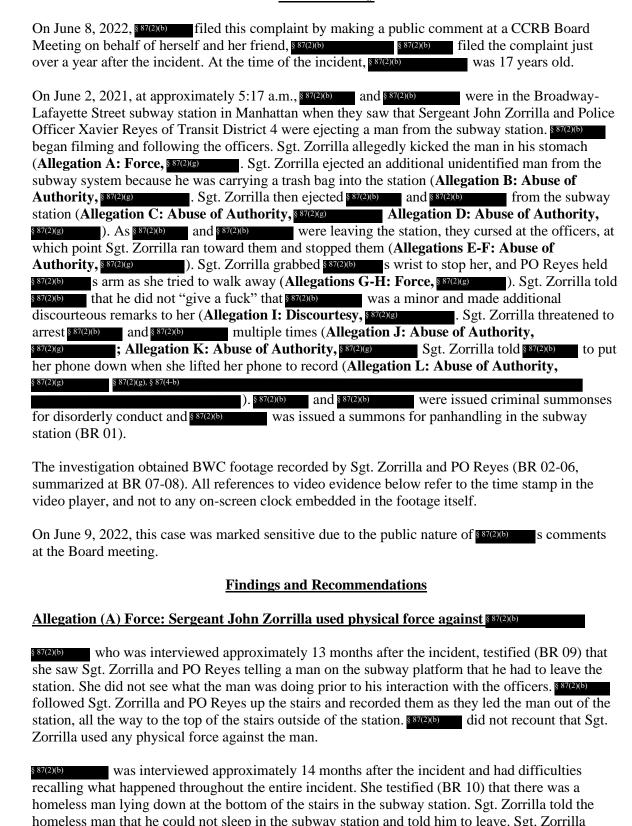
CCRB INVESTIGATIVE RECOMMENDATION

		T		ı					
Investigator:		Team:		CCRB Case #:		Force		Discourt.	☐ U.S.
Laura Strauss		Squad #5		202203727	Ø	Abuse		O.L.	✓ Injury
Incident Date(s)		Location of In	cident:		F	Precinct:	18	Mo. SOL	EO SOL
Wednesday, 06/02/2021 5:17 AM	[Broadway-Lat	fayette su	bway station		09	12	2/2/2022	12/2/2022
Date/Time CV Reported		CV Reported	At:	How CV Reported:	:	Date/Time	Rece	ived at CCI	RB
Thu, 06/09/2022 12:40 PM		CCRB In		In-person		Thu, 06/09/2022 12:40 PM			
Complainant/Victim	Type	Hom	ne Addre	ess					
Subject Officer(s)	Shield	Taxl	ID	Command					
1. SGT John Zorrilla	03069	9335	511	TD 4					
2. PO Xavier Reyes	25133	9672	291	TD 4					
Officer(s)	Allegatio	on				Inve	stiga	tor Recon	mendation
A.SGT John Zorrilla		Force: Sergeant John Zorrilla used physical force against an individual.							
B.SGT John Zorrilla		Abuse: Sergeant John Zorrilla ejected an individual from the subway system.							
C.SGT John Zorrilla		Abuse: Sergeant John Zorrilla ejected \$87(2)(b) from the subway system.							
D.SGT John Zorrilla		Abuse: Sergeant John Zorrilla ejected § 87(2)(b) from the subway system.							
E.SGT John Zorrilla	Abuse: S to § 87(2)(b)	Abuse: Sergeant John Zorrilla issued a retaliatory summons to \$857(2)(b)							
F.SGT John Zorrilla		Abuse: Sergeant John Zorrilla issued a retaliatory summons to \$87(2)(b)							
G.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against \$87(2)(b)								
H.PO Xavier Reyes	Force: Police Officer Xavier Reyes used physical force against § 87(2)(b)								
I.SGT John Zorrilla	Discourtesy: Sergeant John Zorrilla spoke discourteously to \$87(2)(b)								
J.SGT John Zorrilla	Abuse: Sergeant John Zorrilla threatened to arrest § 87(2)(b)								
K.SGT John Zorrilla	Abuse: Sergeant John Zorrilla threatened to arrest § 87(2)(b)								
L.SGT John Zorrilla	Abuse: Sergeant John Zorrilla interfered with suse of a recording device.								
§ 87(2)(g), § 87(4-b)									

Case Summary



kicked the homeless man's stomach, after which he stood up and left the station.

PO Reyes' BWC footage (BR 02, at 00:20) shows Sgt. Zorrilla and PO Reyes approach a man who is sleeping on a bench on the subway platform. The officers tell the man that he has been sleeping there for hours and needs to leave. No officer makes any physical contact with the man, except when PO Reyes briefly touches his arm. Sgt. Zorrilla does not kick the man at any point.

Sgt. Zorrilla was interviewed approximately 14 months after the incident. His testimony (BR 11) was consistent with the BWC footage. Sgt. Zorrilla denied kicking the first man that he ejected in the stomach.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant John Zorrilla ejected subway system. from the

In PO Reyes' BWC footage (BR 02, at 05:46), Sgt. Zorrilla tells a man who is walking into the subway station while holding a black garbage bag that he needs to go upstairs and that he cannot enter with the bag. The man is holding a MetroCard in his hand. He asks why he cannot take the train and Sgt. Zorrilla replies that it is garbage. The man says, "It's not garbage, it's recyclables," but he complies and exits the subway station. At that point, it was approximately 5:22 a.m. and both the subway station and subway platform were very sparsely populated. A screenshot of the man carrying the garbage bag can be found at (BR 12).

Neither subway system. seeing Sgt. Zorrilla eject a second man from the subway system.

Sgt. Zorrilla testified that the man was not allowed to carry that type of garbage bag into the subway station, as individuals cannot bring large objects, such as large bags or shopping carts, into the transit system. Sgt. Zorrilla explained that a large bag interferes with people sitting down, and it can prevent people from entering a subway car if the car is crowded. According to Sgt. Zorrilla, the man was violating NYCRR § 1050.9(g)2 – carrying obstructive objects.

Neither Sgt. Zorrilla nor PO Reyes prepared a Transit Ejection Report regarding this incident (BR 13).

No person may carry on or bring to any facility or conveyance any wheeled cart greater than thirty inches in either length or width; or any item that: (1) is so long as to extend outside the window or door of a subway car, bus or other conveyance; (2) constitutes a hazard to the operation of the Authority, interferes with passenger traffic, or impedes service; or (3) constitutes a danger or hazard to other persons. 21 NYCRR § 1050.9(g) (BR 15). Any person who violates any portion of New York Codes, Rules, and Regulations (NYCRR) Part 1050 is subject to ejection from New York City Transit facilities. Patrol Guide Procedure 212-20 (BR 14).

The investigation found that the man's garbage bag did not constitute a hazard, interfere with passenger traffic, or impede service, as it was not excessively large in size and the subway station was sparsely populated at the time. Additionally, though it is possible that an individual holding a garbage bag could act in a way that violated the NYCRR, mere possession of a garbage bag itself does not create an automatic presumption that such a violation will occur.

Allegation (C) Abuse of Authority: Sergeant John Zorrilla ejected \$87(2)(6) subway system. Allegation (D) Abuse of Authority: Sergeant John Zorrilla ejected § 87(2)(b) from the subway system. \$87(2)(6) testified that Sgt. Zorrilla told her that she was not allowed to take the subway after the officers ejected the man who had been sleeping in the subway station. Second then went to the machine to put money on her MetroCard. Simultaneously, \$87(2)(b) asked a woman for a MetroCard swipe. The woman did not swipe \$87(2)(b) into the subway. Sgt. Zorrilla then became more aggressive and walked toward \$87(2)(b) and \$87(2)(b) He stated that it was illegal and said, "Absolutely not, you guys are not taking the subway." Sgt. Zorrilla told \$87(2)(6) and \$87(2)(b) and \$87(2)(b) walked toward the subway stairs to exit the station. recounted that she asked the officers if she could go through the turnstiles because the MetroCard machines were not working. An officer replied that if she did not have a MetroCard, she could leave the subway station. A woman then entered the station and \$8(2) asked her if she could give her a few dollars for a MetroCard swipe. Sgt. Zorrilla and PO Reyes then approached her and \$87(2)(b) and told them to leave the subway station. Neither § 87(2)(b) nor § 87(2)(b) recounted that they cursed at Sgt. Zorrilla or PO Reyes at this point during the incident. PO Reyes' and Sgt. Zorrilla's BWC footage from the first part of the incident (BR 02-03) ends at approximately 5:24 a.m., after they ejected the two men from the subway station. During this first part of the incident recorded on BWC, neither \$87(2)(b) nor \$87(2)(b) curses at the officers. Both officers re-activate their BWCs approximately 45 seconds after their first video ended. There is no audio for the first minute of the footage. In sum, there is about one minute and 45 seconds where no audio was recorded. Sgt. Zorrilla's BWC footage (BR 05) opens with Sgt. Zorrilla and PO Reyes standing near an MTA booth. \$87(2)(b) walks toward a MetroCard machine and appears to be buying a MetroCard. At 00:21, a woman walks by and [87(2)(6)] points toward the subway turnstiles. Sgt. Zorrilla then approaches the women and appears to say something to them. §87(2)(b) appear to respond to Sgt. Zorrilla, very briefly, and then go back to trying to buy a MetroCard. There are no civilians or passersby in the immediate vicinity. At 00:40, it is visible that there are two MTA employees on the other side of the turnstile. At no point do they approach, say anything aloud, or become involved during the incident. At 01:01, once the audio begins, Sgt. Zorrilla tells \$87(2)(b) and \$87(2)(b) that they cannot take the subway. He says that they are acting disorderly and cursing people out. \$87(2)(6) asks who she cursed out and Sgt. Zorrilla replies, "You're cursing out me. That's it, that's good enough." \$87(2)(b) and \$87(2)(b) ultimately leave the subway station. Later in the incident, after \$87(2)(b) and \$87(2)(b) already been ejected (at 01:45), \$37(2)6 tells the officers, "You can go fuck yourself," and says, "Suck my dick, dickhead." Sgt. Zorrilla testified that \$87(2)(b) said that she was going to ask someone to swipe her into the system. Sgt. Zorrilla instructed her that she could not do that because it was considered panhandling. Sgt. Zorrilla told § 87(2)(b) and § 87(2)(b) that they could take the train, but they needed to pay the fare. Sgt. Zorrilla did not recall whether \$87(2)(6) ultimately asked anyone for a swipe. \$87(2)(b) went to the machine to purchase a MetroCard. \$87(2)(b) and \$87(2)(b) then started cursing at Sgt. Zorrilla and using "vulgar" language. Sgt. Zorrilla did not remember the specifics of what they said, but they both "had a very dirty mouth." Their voices were at a shouting

CCRB Case # 202203727

volume. At some point, \$\sqrt{200}\$ called Sgt. Zorrilla a "dickhead" and said, "Fuck you," and said, "Suck my dick." Sgt. Zorrilla did not recall at what point during the interaction they made those remarks. Sgt. Zorrilla testified that \$\sqrt{200}\$ and were committing disorderly conduct by cursing at him. He noted that there were two MTA cleaners standing a few feet behind the turnstiles, in the paid area, and that they became focused on the ongoing incident between the women and Sgt. Zorrilla. Sgt. Zorrilla specified that this fact satisfied the "public alarm" element of the disorderly conduct statute. Sgt. Zorrilla did not recall whether there were any other civilians around at the time. Sgt. Zorrilla told \$\sqrt{200}\$ and \$\sqrt{3700}\$ that they were acting disorderly and that they needed to exit the station, which was the first time he told them that they had to leave. Sgt. Zorrilla confirmed that he had no other reason for ejecting them other than that they were acting disorderly.

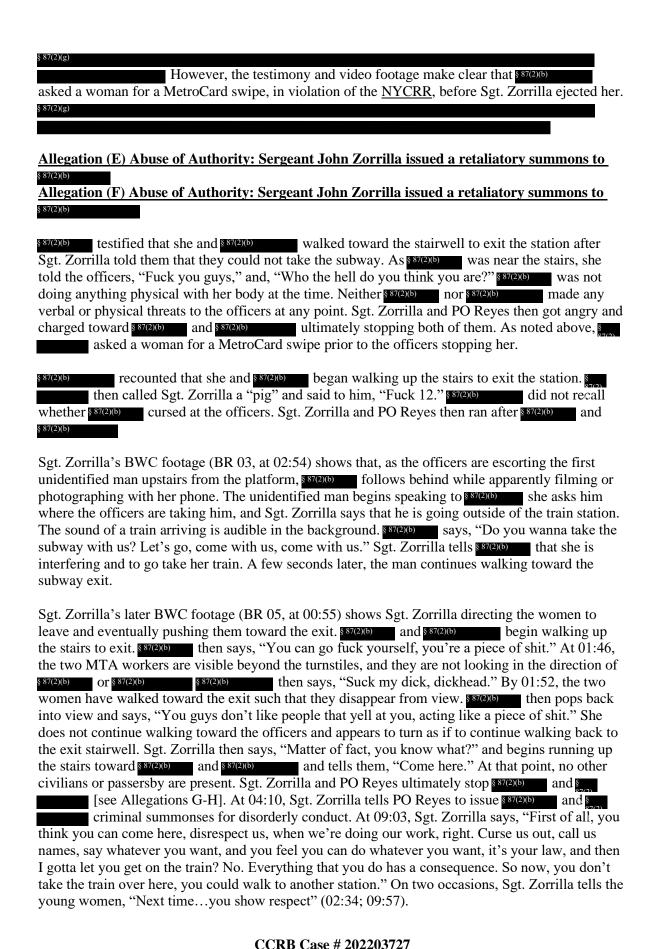
Neither Sgt. Zorrilla nor PO Reyes prepared a Transit Ejection Report regarding this incident (BR 13).

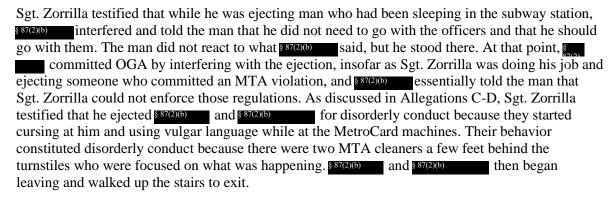
attempted to solicit a fare from a passerby. \$\frac{87(2)(b)}{2}\$ said it was after she attempted to solicit a fare. Sgt. Zorrilla said he did not attempt to eject them until after they started cursing at him. He did not have a specific recollection of \$\frac{87(2)(b)}{2}\$ attempting to solicit a fare, nor did he cite that as a basis for ejecting the women.

No person on or in any facility or conveyance shall conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace. 21 NYCRR § 1050.7(i) (BR 17).

No person, unless duly authorized by the authority shall engage in any commercial activity upon any facility or conveyance. Commercial activities include: (1) the advertising, display, sale, lease, offer for sale or lease, or distribution of food, goods, services or entertainment; and (2) the solicitation of money or payment for food, goods, services or entertainment. No person shall panhandle or beg upon any facility or conveyance. 21 NYCRR § 1050.6(b) (BR 16).

Any person who violates any portion of New York Codes, Rules, and Regulations (NYCRR) Part 1050 is subject to ejection from New York City Transit facilities. <u>Patrol Guide Procedure 212-20</u> (BR 14).





Sgt. Zorrilla further recounted that \$\frac{87(2)(b)}{2} \tag{and }\frac{87(2)(b)}{2} \tag{called Sgt. Zorrilla a continued to curse, taking it "to another level." At some point, \$\frac{87(2)(b)}{2} \tag{called Sgt. Zorrilla a "dickhead" and said, "Fuck you," and \$\frac{87(2)(b)}{2} \tag{said}, "Suck my dick," but he did not recall at what point during the interaction they made those remarks. He decided to issue them summonses at that point because he had given them plenty of chances and plenty of time to leave the station. And \$\frac{87(2)(b)}{2} \tag{had committed several crimes and violations, but Sgt. Zorrilla had used his discretion not to take enforcement action. However, they continued to engage in an aggressive, verbal manner by using foul language. They were free to leave the entire time until they came back toward him, at which point Sgt. Zorrilla decided it was enough and decided to issue them summonses.

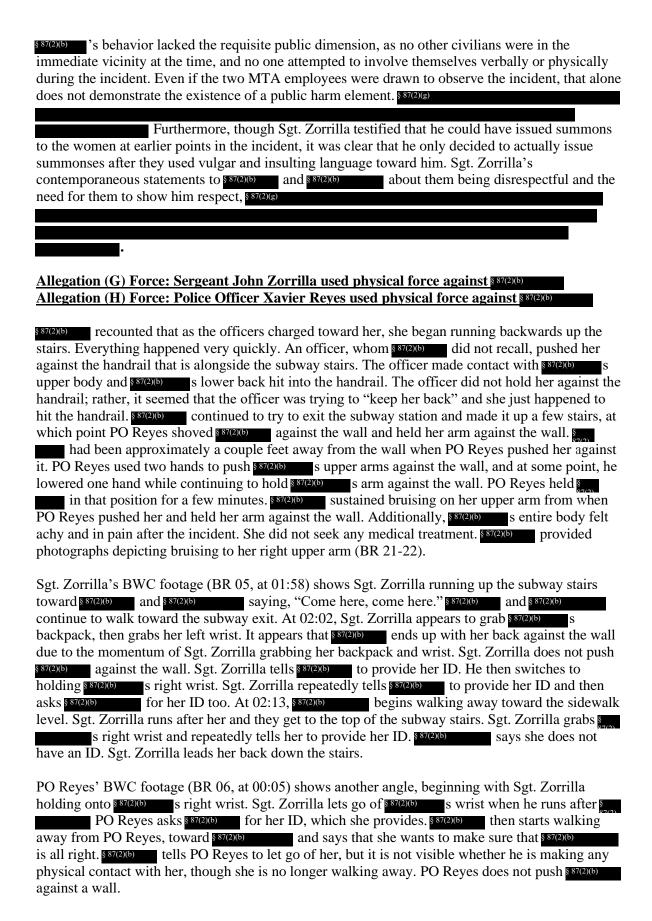
Upon instruction from Sgt. Zorrilla, PO Reyes issued criminal summonses for disorderly conduct to and street and in violation New York Penal Law § 240.20 (4). The summonses read, "...the defendant intentionally caused public alarm by intentionally engaging in unreasonable noise in the transit system" (BR 01).

A person is guilty of disorderly conduct when, with an intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, she: (1) engages in fighting or in violent, tumultuous, or threatening behavior; (2) makes unreasonable noise; (3) uses abusive or obscene language, or makes an obscene gesture; (4) without lawful authority, disturbs any lawful assembly; (5) obstructs vehicular or pedestrian traffic; (6) congregates with other persons in a public place and refuses to comply with an order to disperse; or (7) creates a hazardous or physically offensive condition. New York Penal Law § 240.20 (BR 19).

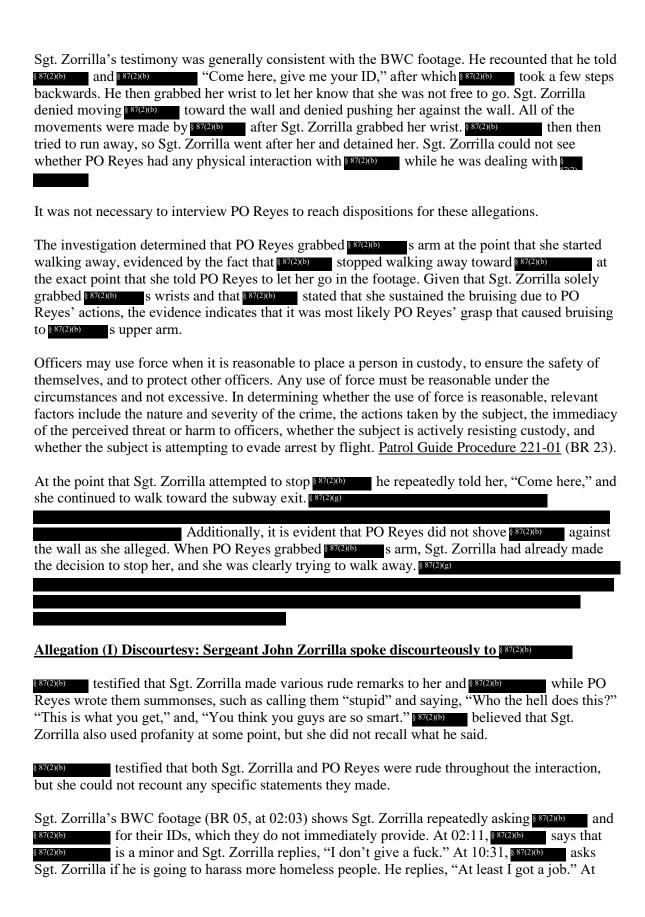
Isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by other aggravating circumstances, rarely provide the requisite mens rea – *intent* to cause public harm – required to support a charge of disorderly conduct. Critical to a charge of disorderly conduct is a finding that defendant's disruptive statements and behavior were of a public rather than an individual dimension. The mere presence of spectators, without evidence that they became verbally or physically involved in the dispute, is not enough to constitute disorderly conduct. *People v. Baker*, 20 N.Y.3d 354 (2013) (BR 20).

It is apparent that PO Reyes incorrectly cited the subsection regarding disturbing a lawful assembly (subsection 4), while his written portion of the summons refers to unreasonable noise (subsection 2). As noted above, Sgt. Zorrilla's testimony focused upon the women having used abusive and obscene language (subsection 3). § § § (2)(9)

. Solely using profanity toward police officers does not constitute disorderly conduct. \$87(2)(b) and \$27(2)(b)



CCRB CTS – Confidential Page 7



10:52, \$3(2)(b) sarcastically says that she is glad to walk [to the next subway station] because she can use some exercise. Sgt. Zorrilla replies, "Yes you do." Sgt. Zorrilla testified that he told \$87(2)(b) "I don't give a fuck," because it was in the "heat of the moment." At that point, it had gotten a little chaotic because he was trying to obtain \$87(2)(b) s IDs and provide instructions. Sgt. Zorrilla told \$87(2)(6) "At least I got a job," because she started engaging in conversation and was being sarcastic, so Sgt. Zorrilla followed her lead and was responding to her in kind. Sgt. Zorrilla did not intend to convey anything about not having a job. Sgt. Zorrilla told § \$7(2)(b) "Yes you do," after she said she could use some exercise. Sgt. Zorrilla testified that it is good to exercise to keep oneself healthy, especially when someone is young. He was confirming to her that it was a good idea to get more exercise. The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR 24). . Although Sgt. Zorrilla maintained that he said the other remarks because he was responding in kind to \$87(2)(b) s sarcasm and because he was informing \$87(2)(b) about the importance of exercise, § 87(2)(g) Allegation (J) Abuse of Authority: Sergeant John Zorrilla threatened to arrest \$37(2)(5) Allegation (K) Abuse of Authority: Sergeant John Zorrilla threatened to arrest \$87(2)(6) testified that she lifted up her phone to record as she and \$87(2)(b) they sat on the stairs waiting for their summonses. Sgt. Zorrilla then took his handcuffs out and walked toward her, and she lowered her phone (see Allegation L). See interpreted Sgt. Zorrilla taking out his handcuffs as an indication that he would arrest her if she continued to record. She did not recount any other instances of Sgt. Zorrilla saying or indicating that she or \$8000 could be arrested or taken to the stationhouse. initially recounted that Sgt. Zorrilla did not say anything about arresting her or taking her to the stationhouse. She then stated that Sgt. Zorrilla did say something to her and \$87(2)(6) about arresting them, but she did not recall what he said. At some point, Sgt. Zorrilla took out his handcuffs and showed them to her and § 87(2)(6) In Sgt. Zorrilla's BWC footage (BR 05, at 02:44), Sgt. Zorrilla tells PO Reyes to write a ticket for says that \$87(2)(b) says that \$87(2)(b) is not getting a ticket. Sgt. Zorrilla replies, "Shut up, before I put you in handcuffs." At that point, \$87(2)(b) has already given her ID to PO Reyes. At 03:05, \$87(2)(6) says that PO Reyes is stealing her ID. Sgt. Zorrilla replies, "Just be quiet, get your summons so you could be out of here before I put you in handcuffs, take you to the stationhouse, and you get your ticket over there, before I put you through for [disorderly conduct]." At 03:35, Sgt. Zorrilla begins twirling his handcuffs in his hand. At 04:30, [87(2)] holds up her phone, as if to record, and Sgt. Zorrilla tells her to put her phone down. Sgt. Zorrilla then continues jangling the handcuffs in his hand (see alternate view in PO Reyes' BWC footage – BR 06, at 02:47). At 20:46,

PO Reyes asks \$87(2)(b) for her height and she says that she does not know it. \$87(2)(b)

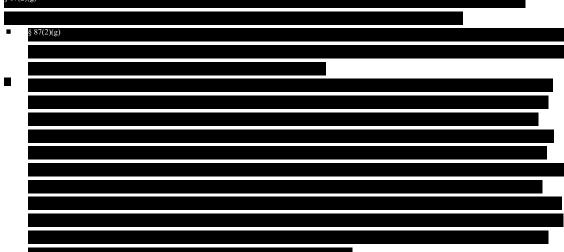
sarcastically says six feet and says, "Stop playing games," Stop playing games, let him write the summons, if you want to play games, I'll bring you to the stationhouse." Sgt. Zorrilla testified that he told \$87(2)(b) and \$87(2)(b) that he could arrest them or take them to the stationhouse numerous times, and that he did so in order to gain compliance. Officers have the general authority to issue summonses at the stationhouse if it becomes unsafe to issue a summons in the field or if they are not able to gain compliance from the civilian to whom the summons is being issued. A summons is issued in lieu of an arrest, and therefore officers can detain and transport a civilian to the stationhouse in order to issue the summons there. Sgt. Zorrilla could have taken \$87(2)(b) and \$87(2)(b) to the stationhouse if he wanted to, but he chose to use discretion to issue them summonses on scene. He explained that he was not threatening them with his remarks. Instead, he was giving them instructions and was telling them what he was capable of doing. If he took them to the stationhouse, there would not have been any additional charges beyond those for which they were receiving the summonses. While \$87(2)(6) and \$87(2)(6) were sitting on the stairs, Sgt. Zorrilla did not have any safety concerns about them because he had enough space. They remained seated on the stairs and did not get up. Sgt. Zorrilla initially did not recall telling \$87(2)(b) "Shut up before I put you in handcuffs." After viewing his BWC footage, he explained that he made that statement because \$87(2)(6) s continuing remarks were escalating the situation and she was the one causing all the aggression. He was trying to achieve compliance and was warning her what could happen if she did not comply. Sgt. Zorrilla believed confirmed that he said, "Just be quiet, get your summons so you could be out of here before I put you in handcuffs, take you to the stationhouse, and you get your ticket over there, before I put you through for [disorderly conduct]." He made that statement because \$87(2)(b) not complying with providing her information to PO Reves and she was prolonging the interaction. Sgt. Zorrilla told § 87(2)(b) "Stop playing games, let him write the summons, if you want to play games, I'll bring you to the stationhouse," because she was prolonging the interaction and Sgt. Zorrilla wanted her to comply so she could get her summons and leave. Sgt. Zorrilla recounted that he took out his handcuffs and started playing with them while \$87(2)(b) and \$87(2)(b) were sitting on the steps to show them that he was serious when he told them that he could lock them up or put them in handcuffs. Zorrilla's claim that he could have taken \$87(2)(b) back to the stationhouse for safety purposes or if he could not gain compliance was not consistent with what was happening when he made those threats – as \$87(2)(b) had already provided her ID, Sgt. Zorrilla did not have any safety concerns about 887(2)(b) at that point, and the threats themselves were about telling her to be quiet. Sgt. Zorrilla told \$87(2)(b) "Stop playing games, let him write the summons, if you want to play games, I'll bring you to the stationhouse," after she did not immediately provide information to PO Reyes as he was writing the summons. §87(2)(g)

Allegation (L) Abuse of Authority: Sergeant John Zorrilla interfered with \$87(2)(b) s use of a recording device. recounted that as she and \$87(2)(6) they sat on the stairs waiting for their summonses, she wanted to record the interaction. \$87(2)(6) they sat on the stairs waiting for their summonses, she wanted to record the interaction. out and walked toward her, and she lowered her phone – all of which occurred two or three times. She eventually stopped trying to record and was not able to record during that part of the interaction. §87(2)(b) interpreted Sgt. Zorrilla taking out his handcuffs as an indication that he would arrest her if she continued to record. Sgt. Zorrilla also told §87(2)(6) to stop recording. In Sgt. Zorrilla's BWC footage (BR 05, at 04:30), \$87(2)(b) takes out her phone and holds it up as if to record. Sgt. Zorrilla tells her to put her phone down until the officers finish. \$87(2)(b) puts her phone down. It sounds like Sgt. Zorrilla continues jangling the handcuffs in his hand. Sgt. Zorrilla does not tell \$87(2)(b) to stop recording at any point. Sgt. Zorrilla testified that he told §87(2)(b) her to put her phone down and wait until the officers were finished for safety purposes. In training, he was taught that civilians need to keep their hands free and in front of them because anything they have in their hands could be used as a weapon. In Sgt. Zorrilla's understanding, a civilian can record while they are being detained for a summons, as long as they do not engage in behavior that causes him to be fearful for his safety. §87(2)(b) been very aggressive from the beginning of the incident, verbally and with her behavior. Sgt. Zorrilla did not know anything about \$87(2)(6) or what issues she may have had, and he wanted to ensure that she did not have anything in her hands throughout the interaction. Individuals have a right to lawfully record police activity. This right to record can be limited based upon officer safety concerns or when a violation of law is committed by the individual who is recording. Officers cannot discourage an individual from recording police activity or intentionally block or obstruct recording devices when there is no legitimate law enforcement reason to do so. Patrol Guide Procedure 203-29 (BR 18). The right to record does not apply to individuals who are under arrest or in the custody of law enforcement. Legal Bureau Bulletin Vol. 50, No. 1 (July 2020) (BR 25). As \$37(2)(6) was temporarily in police custody at the time that she tried to record, she did not have the broad right to record the incident as described in the Patrol Guide. §87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(b) and \$87(2)(b) have been a party (BR 26-27).
- Sgt. Zorrilla has been a member of the NYPD for 19 years and has been a subject in 14 complaints and 62 allegations, six of which were substantiated:
 - 201507072 involved a substantiated allegation of interference with recording against Sgt.
 Zorrilla. The Board recommended Command Discipline B and the NYPD did not impose any discipline.
 - 201509988 involved substantiated allegations of force (pepper spray) and retaliatory arrest against Sgt. Zorrilla. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.

0	§ 87(2)(g)
0	202003090 involved a substantiated allegation of threat of removal to hospital against Sgt.
	Zorrilla. The Board recommended Command Discipline B and the NYPD did not impose any
	discipline.
0	§ 87(2)(g)



- In 202204460, Sgt. Zorrilla ejected a woman who had been sleeping in the subway station and allegedly threatened her with a Taser and used force against her.
- PO Reyes has been a member of the NYPD for three years and has been a subject in two complaints and three allegations, none of which were substantiated. [87(2)(8)]

○ \$87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- As of August 30, 2022, the NYC Comptroller's Office has no record of a Notice of Claim being filed regarding this complaint (BR 28).

•	§ 87(2)(b)					
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	Squad:	5				

Laura Strauss Signature	SI Laura Strauss Print Title & Name	September 13, 2022 Date
Daniel Giansante Signature	IM Daniel Giansante Print Title & Name	September 13, 2022 Date
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	Signature Daniel Giansante Signature	Signature Print Title & Name Daniel Giansante IM Daniel Giansante